[Workers Compensation Board Library]

DISCUSSION PAPER

ASSESSMENT OF PERMANENT DISABILITY UNDER THE WORKERS' COMPENSATION ACT

1. HISTORICAL INTRODUCTION

From its foundation in 1917 up to 1973, the Board used the same basic method for assessing permanent disabilities. This is known as the loss-of-function or physical-impairment method. Three Royal Commissions of Inquiry into the Workers' Compensation system studied this method and issued reports[1] which, though recognizing the problems inherent in it, approved it as the only practical one.

The method was described by Commissioner G.M. Sloan in his 1952 report in the following terms:

> "One (method of measuring partial disability) is to evaluate the loss of function or capacity on a purely physical basis calculated on a percentage of total disability. For instance, the loss of an arm at the shoulder is regarded as a loss equal to 76 per cent of total disability. The claimant's average wage at the time of the injury having been calculated, he receives the ascertained percentage thereof, less the statutory deduction of (one-quarter). His future earnings do not affect his pension, notwithstanding the fact that he might receive a higher wage after the accident than he was receiving at the time of the accident. In other words, under this method of calculating the amount of the award an individual claimant, in many instances, is paid compensation when he has no immediate wage-loss. The reasoning back of this method is that the average wage-loss suffered in many thousands of cases over a life period will closely approximate the amount of an award based on what the relationship of a percentage of incapacity bears to total disability. For example, in the case of a loss of arm at the shoulder the average wage-loss suffered by many thousands of such injured men will work out at approximately 76 per cent of total loss of wages over the average life-span."[2]

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1 Sloan Reports 1942 and 1952, and Tysoe Report 1966.

2 p. 151.

The Board had and still has a Permanent Disability Evaluation Schedule which sets out the percentages allocated to different parts of the body and is used as a guideline in determining awards in individual cases.

The Board undertook a major review of its assessment of permanent disabilities in 1973. It issued Decision No. 8[3] which discussed the various alternative methods of assessment. That decision noted that there were certain advantages in the physical-impairment method. It was administratively simple to operate and did encourage a worker's rehabilitating himself since any earnings he made would not affect the amount of his pension. However, there were serious objections, which the decision states as follows:

> "First, it is difficult to see how the use of standard percentage rates for specified injuries can possibly contribute much to the measurement of impairment of earning capacity unless it is at least supplemented by the application of an occupational variable. For example, suppose a stonemason and a salesman both suffer the loss of a hand. Why should they receive the same percentage of pre-accident earnings as compensation, or the same cash figure? If it is impairment of earning capacity that we are trying to measure it could well be that the loss of a hand is extremely detrimental to a stonemason, but it could have no significant effect on the earnings of a salesman. Conversely, an injury that produced a speech impediment may have little or no effect on the earning capacity of the stonemason but may compel the salesman to take a lower-paid job. Commissioner G.M. Sloan felt able to meet this objection with the following response:
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> > 'The physical-impairment theory is based upon mass values and mass averages. Some injured men under this method get relatively more than they would under an individual valuation basis; others get less. Collectively, the long-term average takes care of the differences, and in the main the result is that the average injured workman receives a just recompense for loss of wages, real or potential, over a period of years.'[4]

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3 (1973) 1 WCR 27.

4 p. 155 of 1952 Report.

> With respect, however, it is difficult to find this rationale convincing. If one claimant is being grossly under-compensated in comparison with actual loss of earning capacity, and if another claimant is being grossly over-compensated to the same extent, should we really take comfort in the thought that the average claimant is being fairly treated, or that the right amount is being paid out in total? There is no such thing as justice on the average."[5]

To avoid these difficulties, Decision No. 8 introduced a dual system for compensating permanent disabilities of the spinal column. It was decided that the worker would be paid the greater of the physical-impairment method and a projected loss-of-earnings method. The projected loss-of-earnings method was described as follows:

> "Instead of attempting to keep track of the actual earnings of a claimant indefinitely into the future, a forward projection could be made of the impact of the disability on future earnings, and by reference to that projection, a conclusion reached about the impairment of earning capacity. Where a disability appears to have stabilized, then, absent any evidence on which to make a different projection, it could be assumed that the claimant will continue to earn indefinitely into the future at a level equivalent to what he is able to earn at the time of the evaluation. Of course, this will always be different from actual earnings. Shifts in the condition of the labour market, improvements of skills on the part of the claimant, subsequent sickness for other reasons, and a whole range of other variables may result in actual future earnings being different from the projection. But this loss of accuracy might be considered a price worth paying to avoid the intrusion into the private lives of claimants that might be required in measuring actual earnings or earning capacity on a continuing basis, to keep administrative costs to an acceptable level, and perhaps most important of all, to avoid creating a disincentive to vocational rehabilitation."[6]

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5 Decision No. 8, p. 30-31.

6 Decision No. 8, p. 33-34.

On March 30, 1979, subsequent to a sixteen-month study by a Disability Awards Committee, the dual system was extended to non-spinal disabilities. The study concluded that, in the case of non-spinal injuries, awards based upon the physical-impairment method, with the use of the Permanent Disability Evaluation Schedule as a guide, generally equalled or exceeded the likely future loss of earnings of the worker. Nevertheless, the study pointed out a few cases where workers lost earnings in the future in excess of the amount yielded by application of the schedule. Decision 8 was therefore extended to include non-spinal injuries, effective October 1, 1977.[7]

A revision of the dual system was carried out in 1985 which left the main principles of the system unchanged. Provision for periodic reviews of the projected loss-of-earnings assessment was made. The object was to increase the accuracy of the projection. At the same time, limits were placed on the reviews in order to keep to a minimum administrative costs and any adverse impact on disabled workers' privacy and rehabilitation.[8]

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7 Decision No. 297, (1979) 5 W.C.R. 11.

8 Decision No. 394, (1985) 6 W.C.R. 32.

2. OBJECTIVES OF WORKERS' COMPENSATION

Once an industrial injury or disease has occurred, a Workers' Compensation system aims to compensate the disabled worker for the effects of his disability. It can do this in two main ways. It, firstly, can provide rehabilitation assistance to ensure that any loss of income caused by the disability is minimized and, secondly, cause monetary payments to be made to the worker to reimburse his losses. In a report regarding the Ontario Workers' Compensation system, Mr. Paul C. Weiler[9] commented on the extent to which disabled workers should be compensated for their losses in the following terms:

> "There is a tendency for the governments who administer it and for the employers who pay for it to identify workers' compensation with other public programs for income maintenance: with unemployment insurance or social assistance, for example. From that perspective, it is natural to be concerned about the fact that workers' compensation now pays comparatively more generous benefits and to resist proposals for further enrichment of these benefit levels.
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> "That attitude rests on an invalid premise. In truth, workers' compensation occupies an intermediate position between our two main legal models for reimbursing lost income: tort liability and social welfare. By contrast with the tort remedy - for motor vehicle accidents, for example - workers' compensation does not aim at full redress for all damages inflicted on the worker by his injury. But by contrast with the social welfare system (old age pensions, unemployment insurance et al.), workers' compensation does aim to replace the bulk of the prior income lost by the injured claimant.
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> "There is an explanation for this stance. Workers' compensation embodies an historic trade-off. Employees in Ontario gave up the right to sue their employers in court and to collect full damages for all the losses they had received (including pain and suffering) if they could establish legal fault on the part of the employer. In return, employees were guaranteed protection

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9 Reshaping Workers' Compensation for Ontario, a report submitted to Robert G. Elgie, Minister of Labour, Province of Ontario, November, 1980.

against income losses due to industrial injuries, irrespective of fault. Back in the early part of the twentieth century, it might have appeared that (Ontario) workers were not giving up very much. The tort liability of the employer was hedged about with steep legal hurdles (the contributory negligence bar, the volenti doctrine, and the fellow-servant rule). Even if the claim could, theoretically, be navigated through these shoals to establish the employer's legal responsibility, there were grave practical difficulties in the litigation: e.g., securing and paying for legal counsel, or resisting offers for a cheap settlement while the law suit took its leisurely course. Recent developments in our ordinary courts make these obstacles to employee litigation much less intimidating now. The effective basis of tort liability is gradually moving towards what some commentators call 'negligence without fault', the near-functional equivalent of strict liability. Legal aid now furnishes effective counsel in civil actions.

"Comprehensive health care insurance pays the hospital and doctor bills. New no-fault minimum income benefits (now compulsory in Ontario automobile insurance) remove some of the pressing concern about immediate income and give the plaintiff a financial base upon which to pursue his right to full redress in court. And these ultimate rewards can be substantial indeed: in some recent Supreme Court of Canada decisions, verdicts of six, seven, and eight hundred thousand dollars, including up to one hundred thousand dollars for purely non-economic suffering, have been awarded.

"I do not suggest that workers' compensation is now outmoded and should be dispensed with in favor of a revived tort action. I believe that this would be a retrograde step. The initial premise of workers' compensation remains valid. All workers should be guaranteed protection against loss of income due to occupational injuries irrespective of the incidence of fault - be it their own, their employer's, or a fellow employee's. In return, the small number of employees who happen to have been injured as a result of the fault of their employer should not be treated as, in effect, winners in a lottery which permits them to collect substantially greater general damage awards in court. Since this is the bargain which has been struck, then the workers' compensation beneficiary must be viewed in quite a different fashion than a claimant for unemployment insurance or social assistance, who must appeal to the generosity of the community conscience. An injured worker does not enjoy his form of compensation as a matter of grace. He has been required to give up a common-law right of action enjoyed by everyone else. That right would now be worth a great deal. In return he must be considered entitled to full enjoyment of the statutory right he was promised in exchange. There still remains in workers'

> compensation considerable dilution in degree of income maintenance afforded disabled workers. My inquiry about the validity of such limitations begins with a strong principle of full redress for such income losses, a principle which should be overridden only for cogent and compelling reasons."

Mr. Weiler's report brings out the fact that different types of losses can result from a disability. The following are suggested as the common types that occur:

a) Pain, suffering, and loss of enjoyment and expectation of life.

b) Actual loss of income. This covers the situation where the worker is disabled from earning as much after the injury as before.

c) Other economic losses, for example, loss of income from loss of promotional opportunities, restrictions on competing in the open labour market, loss of fringe benefits and increased medical or other expenses.

As appears from Mr. Weiler's report, the first of the above items has not traditionally been covered by Workers' Compensation. The others have been covered, but to varying degrees. The aim of this paper is to consider what changes may be required to achieve the object of, as far as possible, fully compensating disabled workers for their losses.[10]

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10 Additional medical or other expenses incurred because of a disability are now covered by such things as the Board's payment of medical accounts, subsistence allowances and transportation for journeys necessary for treatment or rehabilitation programmes, clothing allowances, personal care allowances, homemaker allowances and independence and home maintenance allowances. It is not proposed to deal with these allowances in this paper.

The Board feels that this consideration must take into account not only the aim of compensating the individual worker but also the need to do this in a manner which provides consistency and fairness between different workers. Workers with the same losses should receive the same amount of compensation from the Board and workers with different losses should be paid in proportion to their losses. It is a just cause for complaint if a worker who has received compensation from the Board discovers that someone in a similar condition has received significantly more benefits than himself. It means that one of those workers has received more or less than the amount required to compensate him for his losses. Neither of these possibilities is an acceptable one within the proper aims of a workers' compensation system.

The aim of compensating workers for their losses in a fair and consistent fashion must also be subject to the requirements of administrative practicability. Principles must be established which are capable of being applied by the Board and its staff in the everyday situations that arise for decision.

3. CASE FOR CHANGE IN BRITISH COLUMBIA

As noted in the introduction contained in Part 1 of this paper, the physical-impairment method of assessing disability now in use by the B.C. Workers' Compensation Board rests on a premise that there will be a direct correlation between the degree of physical impairment and the earnings lost by the worker over his lifetime. In reality, this premise does not hold true. Awards based on that method often bear little relationship to the actual loss of income. The necessity to have a system which is administratively workable and fair and consistent for all workers may always result in some compromise of the aim to accurately measure the individual worker's loss of earnings, but the divergence in the present system seems excessive. It appears in reality to be more a measurement of physical disability than of earnings loss. It should be noted that 80% of the awards in B.C. are for 10% of disability or less and that the vast majority of these workers return to their regular employment with no loss of earnings.

In cases where the award is greater than the actual income loss, the system may be justified on the basis that it covers other economic losses, such as reduced prospects of promotion or capacity to compete in the labour market. De facto, it may also be said to compensate for pain, suffering and loss of enjoyment or expectation of life. However, this does not provide a proper justification when it is considered that in other cases workers receive no compensation for these items. The introduction of the dual system in cases where the disability results in a loss of earnings that exceeds the impairment of function ensures that there is no actual loss compared with pre-injury income, but does not give compensation for pain and suffering. Consideration under the dual system might be given to such matters of loss of promotion and ability to compete in the labour market, but these may often be too speculative in the individual case to be of significance.

The following examples illustrate the unfairness that can arise from the present system as between different workers with the same disability.

The Case of Bill J.

Bill is a 35-year-old millwright in the sawmill industry. He lost his left leg just above the knee in an industrial accident when it was crushed by some heavy machinery. Bill has adapted to the use of an artificial limb and, with the cooperation of his employer and the assistance of the Rehabilitation Department, he has returned to modified employment.

Loss of leg = 50% disability.
50% of average pre-injury earnings of
$1,000 per month x 75% = $375.
Bill returns to work and is earning $700 per month.

Result: $375 per month pension plus
$700 earnings equals $1,075 per month.

The Case of John S.

John is a 47-year-old heavy equipment operator. He lost his right leg when the equipment he was operating rolled down an embankment. Following rehabilitation therapy, he managed to return to his regular job and has not sustained any reduction in pre-injury earnings.

Loss of leg = 50% disability.
50% of average pre-injury earnings of
$1,000 per month x 75% = $375.

Result: $375 per month pension plus
$1,000 earnings equals $1,375 per month.

The Case of Steve W.

Steve is a 55-year-old faller who loses his left leg as a result of a power saw accident. He is unable to return to his previous line of work or to other jobs in the industry. Because of his low education and language levels, he can only obtain unskilled light work in another industry.

Loss of leg = 50% disability.
50% of average pre-injury earnings of
$1,000 per month x 75% = $375.
Steve returns to work and earns $400 per month.

Since his loss is greater than the 50% award, he receives a projected loss-of-earnings award of $600 x 75% = $450.

Result: $450 per month pension plus
$400 earnings equals $850 per month.

It must be remembered that the actual benefit to the claimant from the Board's pension is higher than appears since it is tax free. It is apparent, however, that there is a significant discrepancy between the benefits which each of these workers have received under the present system. There seems to be no way in which these differences can be justified. The person with the largest loss of income receives the largest pension from the Board but overall is the least well off of the three examples.

4. AN ALTERNATIVE PROPOSAL

The alternative proposal which is set out in this discussion paper is in line with changes which have been recently made or proposed in other jurisdictions inside and outside Canada, notably in Saskatchewan, Washington State, New Brunswick, New Zealand, Ontario and Quebec.

It has been modified to reflect the particular circumstances existing in this province.

In developing this proposal, the Board has concluded that it is possible to classify the components of compensation systems for permanent disability into three categories:

a) Consequences of Permanent Disability

b) Means of Measurement

c) Method of Payment

The first category deals with the types of losses resulting from a disability for which compensation should be paid, the second with how these losses are measured, and the amount of compensation determined, and the third with how or in what form the compensation benefits are to be paid. A discussion of these categories follows:

a) Consequences of Permanent Disability

It should not be inferred from the above discussion that it is being suggested that no compensation should be paid in those cases where a permanent disability produces no loss of earnings. As Mr. Weiler points out in his review of the Ontario system:

> ". . . individuals who sustain a serious disability must still have some form of redress irrespective of the earnings question. No one is suggesting that serious disability should go unrecognized simply on the grounds that the worker was able to continue in employment with no loss."

It appears that in principle all the types of losses described in Part 2 of this paper which can result from a permanent disability should be compensated for. In particular, this includes pain, suffering, and loss of expectation and enjoyment of life, loss of promotion, or ability to compete in the labour market and fringe benefits. As noted in Part 3 of this paper, the present system does in some cases provide de facto coverage for these items. The intention is not to remove this benefit but rather to devise a system that will provide it for all permanently disabled workers.

b) Means of Measurement

There appear to be three possible ways of measuring the consequences of permanent disability and the compensation payable:

i) a schedule of disabilities such as the existing Permanent Disability Evaluation Schedule;

ii) a projected wage-loss system (with or without review) such as is presently in use by the Board;

iii) an actual wage-loss system with review.

It does not appear that actual loss of income can be properly measured by a schedule. The choice of method for measuring this type of loss must be between the projected and actual wage-loss systems. This choice is discussed in Part 6 of this paper.

The consequences of permanent disability other than actual loss of income are largely non-pecuniary and/or unquantifiable in nature. These include pain, suffering, and loss of enjoyment and expectation of life, loss of ability to be promoted or to compete in the labour market, and loss of fringe benefits. There will undoubtedly be variations in the degree to which these items affect different workers. However, having regard for the need to have a system which is administratively viable and provides consistent results between different workers, it does not appear that there is any other realistic method of measurement for these items than the use of a schedule.

c) Method of Payment

Compensation benefits for the consequences of permanent disability could be paid to the worker by any of the following methods:

i) lump-sum payment;

ii) periodic payments (for term or life);

iii) structured payments (combination of i and ii).

It is proposed that compensation benefits measured by a schedule for non-pecuniary and unquantifiable losses should be paid by a single lump-sum payment but that compensation benefits for actual earnings loss should be paid by periodic payments. Since the latter type of payments are to replace actual earnings which would have been received by a worker periodically over his life, it is only reasonable that those benefits should be paid in the same way. One of the initial reasons for establishing Workers' Compensation Boards as a forum for determining entitlement to compensation in cases of industrial injury was to avoid the lump-sum damage awards made in the courts. There remains merit in the argument that a worker's position is best protected by providing a lifetime pension. On the other hand, experience has shown that there are advantages to workers and the system in paying lump sums in certain situations. The worker's independence and rehabilitation are often enhanced by his receiving the whole amount to which he is entitled at one time. The trend at the Board has been to increase the situations when commutations of pensions into lump sums are granted. It appears to the Board that in a system such as is being discussed in this paper, where the awards for actual earnings loss and other losses are separately assessed and the worker always receives a periodic pension for any actual earnings loss, there can be no valid reason for withholding the full amount of the award for the other losses. With respect to pain and suffering,

they will often be felt more acutely just after the injury. Other items might be spread over the worker's life, but it would be highly speculative to attempt some kind of periodic payment that would bear a reasonable relationship to what actually might have occurred.

5. LUMP-SUM PAYMENTS

The proposal is that a schedule be used to measure pain and suffering, loss of enjoyment and expectation of life and other unquantifiable losses. The permanent Disability Evaluation Schedule now in use in British Columbia is similar to the schedule in most other jurisdictions. Refinements are currently being made that will provide more comprehensive ratings, particularly for back disabilities. The schedule is often criticized for bearing no relationship to actual earnings loss, but there is general acceptance that it is reasonably indicative of physical disabilities. There seems no reason to change a schedule that has wide acceptance in Canada and the United States.

In addition to a schedule, it will be necessary to specify a maximum lump-sum payment to which the percentages set out in the schedule can be applied. Some examples of maximum lump-sum awards in other jurisdictions are set out below.

a) Saskatchewan currently awards a $20,200 lump-sum payment for permanent total disability regardless of the worker's earnings, age or occupation.

b) New Brunswick awards $30,700 for permanent total disability, regardless of the worker's age, occupation or earnings. This is equivalent to one and a half times the annual average wage for the province.

c) Quebec, through legislative proposals, is recommending about $50,000 for permanent total disability on an age-graduated scale.

d) The Weiler Report recommended an amount equal to the maximum wage rate (proposed by him to be $40,000) on an age-graduated scale.

e) The courts presently award a maximum of approximately $175,000 for pain, suffering and loss of enjoyment of life.

It would be unrealistic for any compensation jurisdiction to entertain an amount of the magnitude allowed by the courts for the following reasons:

a) Compensation is a guaranteed no-fault system.

b) There is no necessity for legal fees in the compensation system.

c) Compensation awards are subject to review.

As noted by Mr. Weiler in the quotation set out in Part 2 of this paper, Workers' Compensation originated as a compromise whereby the worker gave up his right to damages in return for receiving a guaranteed right to compensation for industrial injuries.

As well as a maximum, it is also suggested that there would be a minimum lump sum of, for example, $1,000.

The question arises whether there should be some age graduation in the lump-sum schedule because the younger worker must endure the consequences of the disability for a longer period. There is also greater potential for him to experience difficulties in competing in the open labour market or to experience loss of promotional opportunites.

The Schedules 1 - 6 below illustrate how the lump sums could be calculated with an age variable for the maximum lump sums now in force in Saskatchewan and New Brunswick and the maximum proposed in Quebec. In Schedules 1 - 3, one quarter of the award would be given regardless of age and three quarters would be given proportional to life expectancy. That is, a 20-year-old would get the whole award, and an older claimant would get one quarter of the award plus that fraction of the remaining three quarters represented by the ratio of his life expectancy to a

20-year-old's life expectancy. The schedule entries are for 100% disability; awards for lower percentages of disability would be reduced proportionately. The same principles apply in Schedules 4 - 6, but one half of the award would be given regardless of age and one half proportional to life expectancy.

	Schedule 1 Saskatchewan	Schedule 2 New Brunswick	Schedule 3 Quebec
Maximum Award	$20,200	$30,700	$50,000
Award By Age			
20	$20,200	$30,700	$50,000
30	17,700	26,900	43,800
40	15,200	23,000	37,500
50	12,400	18,800	30,600
60	10,600	16,100	26,300
65	9,300	14,200	23,100

	Schedule 4 Saskatchewan	Schedule 5 New Brunswick	Schedule 6 Quebec
Maximum Award	$20,200	$30,700	$50,000
Award By Age			
20	$20,200	$30,700	$50,000
30	18,400	28,000	45,600
40	16,700	25,300	41,300
50	15,200	23,000	37,500
60	13,600	20,700	33,800
65	12,900	19,600	31,900

There would have to be a provision for maintaining the real value of the lump sum. The following methods of adjustment might be considered:

a) the annual change in an index of wages and salaries;

b) a periodic review by the Board or the Government;

c) the annual change in the Consumer Price Index.

6. PERIODICAL PENSION

The Board's proposal is that actual income losses be measured by a projected loss-of-earnings method (with or without review) or an actual loss-of-earnings method with review.

Both the projected and the actual loss-of-earnings methods require a determination to be made of what types of employment are suitable for and available to the claimant. This can be a difficult and controversial determination in situations where the claimant feels that he is earning the maximum amount which his disability allows, but the Board considers that he could earn more. However, it appears to be inevitable that such determinations will have to be made. It would not be feasible to simply leave it to the claimant to decide the level of earnings of which he is capable.

The choice between the two methods and on the question whether to have reviews on the projected loss-of-earnings method is largely dependent on a consideration of the advantages and disadvantages of having reviews. These are as follows:

Disadvantages

a) Reviews reduce incentive towards rehabilitation.

b) Reviews add to administrative costs.

c) Reviews affect a worker's privacy.

d) Reviews may lead to follow-up decisions that are not more accurate than original decisions.

Advantages

a) Additional information will result in more accurate and more equitable loss-of-earnings pensions.

b) There is often a difference between the timing of the physical and vocational plateaus of a worker, making long-term projections highly speculative.

c) It is irresponsible to pay long-term earnings loss without some verification of the actual results.

d) There are no procedures in place to measure the real impact of disability on earnings loss. A periodic review will serve to monitor how well the system works.

It may be that the constant reviews required by the actual loss-of-earnings method would mean that the disadvantages listed above would become overwhelming. The best system would appear to be a projected loss-of-earnings method with limited review such as was established in Decision No. 394. This will produce many of the advantages of having reviews while minimizing their adverse effects. The projected loss-of-earnings method has now been in use by this Board for a number of years and seems to have been generally accepted as a reasonable method of measuring disability.

Because this method is projecting the future, the calculations made under it must be taken as accurate in only a general sense. The dollar figure which it is calculated the claimant will lose would be expected to be approximately rather than totally correct. It would appear to follow from this that, where the calculated loss is minimal, say less than 5% of his pre-injury earnings, no pension on a projected loss-of-earnings basis should be awarded. On the other hand, if a seriously disabled worker is concluded to be only capable of earning less than this minimum he would be

considered totally unemployable for the purpose of determining his pension. Similarly, where there is a review of an existing pension, there should be no increase or decrease in the pension unless the calculation shows a dollar change greater than this minimum amount.

7. INTEGRATION WITH OTHER BENEFIT SYSTEMS

If the purpose of compensation is to replace loss of income, the question of whether forms of income protection provided by other agencies should be taken into account must be considered. Presently, there is no integration of benefits in British Columbia except for widows and dependants of deceased workers under Section 17 of the Act with regard to Canada Pension Plan benefits.

There appear to be two main factors to consider in debating this issue. On the one hand, it may be said to be unfair to take account of benefits received by a claimant from other sources when it is his contributions to those sources which have produced them. On the other hand, the main aim of the Workers' Compensation Act is to compensate claimants for their losses and it does not appear proper that they should receive benefits from two sources for the same losses and thereby be compensated twice over. A fair solution may be to take no account of benefits where the worker's contributions have produced the benefit, but to do so in other cases. A worker's contributions to a benefit source would not be considered unless it was directly made by him for that purpose, for example, a premium paid to a private insurance company. The fact that he had worked in an industry and he and/or his employer paid general taxes would not itself for this purpose be regarded as a significant contribution to government or quasi governmental programs. With regard to Canada Pension Plan, the worker does make specific direct contributions. However, these contributions do not provide the sole source of funding for the eventual benefit. It might be reasonable in such cases to take into account 50% or some other appropriate percentage of the benefit from the other agency.

The Board's present practise with regard to the projected loss-of-earnings method is that the pension is not automatically payable for life. If the worker is aged 50 or over at the time of injury, it is considered that he will have already accumulated retirement benefits and

that at age 65 his pension should be reduced to reflect this. A formula is set out which provides for a reducing proportion of the pension being paid after age 65 depending on his age at the time of the injury. The older the worker at this time the more retirement benefits he will be considered to have already accumulated prior to the injury. This formula can be criticized as being a somewhat arbitrary one which does not reflect the individual variations in the extent to which a worker's disability will affect his ability to accumulate entitlement to retirement benefits. On the other hand, it has the advantage of providing administrative simplicity and consistency. Some such formula could be used under the proposed system. Alternatively, an attempt could be made to more accurately estimate the worker's actual loss of retirement income.

There appear to be two types of retirement benefits that require consideration:

a) Canada Pension benefits;

b) employer or union pension plans.

It might be possible for the Board to calculate individually in these cases what benefits claimants might have obtained if he had not been disabled and then to pay a pension of 75% of the difference between that figure and the actual benefit being paid. Another option might be for the Board itself to establish a retirement plan for disabled workers which would be generally in line with employer or union plans. It could provide contributions to the system and the amount of the contributions and the benefits would vary according to the amount of the worker's disability pension. In Saskatchewan, an amount equal to 5% of the worker's benefits is set aside and on retirement the accumulated sum is used to purchase an annuity.

8. CONCLUSION

The present system of awarding compensation for permanent disabilities generally ensures that workers who suffer actual losses of income receive full compensation for their loss. In some cases, it provides compensation beyond the actual losses suffered which might be said to cover other types of losses. Yet, the benefit of this coverage is not received by all disabled workers, particularly those whose disability causes them a significant loss of income. The proposed system will have the effect that all permanently disabled workers receive a pension to cover actual losses of income and, in addition, a lump sum to cover the other losses they may suffer.